

Exhibit I-1
Draft Conditions of Approval for
ABCUP P22-03906

Planning Commission Hearing: Consideration of Conditional Use
Permit Application No. P22-03906

**City of Fresno
Planning and Development Department**

**DRAFT Conditions of Approval
April 3, 2024**

Conditional Use Permit Application No. P22-03906

Planner: Steven Martinez
Steven.Martinez@fresno.gov

PROJECT DESCRIPTION

Conditional Use Permit Application No. P23-00593 was filed by Felipe Ceballos, on behalf of Baldev Khela of Circle D gas station, and pertains to an existing to ± 2,939 square-foot gas station and convenience store located on a ±0.60-acre developed site located on the southeast corner of North Fresno Street and East Olive Avenue.

The establishment previously operated with a Type 21 alcohol license at this location. However, due to a fire in 2018, the use ceased operations and considered abandoned pursuant to Fresno Municipal Code Section 15-404(F)(3). Conditional Use Permit Application No. P23-03906 requests to reestablish a State of California ABC Type 21 (Off-Sale Beer, Wine, & Distilled Spirits) alcohol license for the Circle D gas station and convenience store.

The hours of operation will be 5:30 a.m. to 2:30 a.m., 7 days a week.

**APN: 452-081-17S
ADDRESS: 2520 E OLIVE AVE, FRESNO, CA 93701
ZONING: CG
(Commercial General)**

PART A - ITEMS TO BE COMPLETED

The following items are required prior to final approval and/or commencement of land activity:

Planner to check when completed.	
<input type="checkbox"/>	Development shall take place in accordance with Exhibits O, A, E, F dated May 24, 2023.
<input type="checkbox"/>	This special permit approval shall comply with all applicable provisions of Section 15-2706 of the Fresno Municipal Code (FMC) for alcohol sales for the Responsible Neighborhood Market Act.
<input type="checkbox"/>	Daily alcohol sales shall not occur between the hours of 2 a.m. and 6 a.m.
<input type="checkbox"/>	Operator shall maintain site and facilities free of refuse, debris, or other accumulated matter and shall be kept in good repair at all times.
<input type="checkbox"/>	Demonstrate compliance with FMC Section 15-2706-S (Cancel and Transfer) prior to issuance of a State of California Alcoholic Beverage Control Type 20 (beer, wine for consumption off premises where sold).

	<p>Each ABC license that is canceled also includes surrender of the alcohol-sales portion of all related Conditional Use Permits and waiver of any legal non-conforming use rights related to the sale of alcohol for off-site consumption.</p> <ul style="list-style-type: none"> • Provide a letter of acknowledgement from the store owner(s)/operator(s) that will be surrendering the alcohol-sales portion of all related Conditional Use Permits associated with their store/operation.
<input type="checkbox"/>	<p>The display and sale of grocery products, fresh produce, and alcoholic beverages shall occur in accordance with the operational statement dated November 3, 2023.</p> <ul style="list-style-type: none"> • No less than 70% of the mercantile area shall be dedicated to grocery sales. • No less than 10% of the mercantile floor area shall be dedicated to the sale of fresh produce. • Should the area dedicated to fresh produce be reduced to less than 10%, the display and sale of alcoholic beverages shall cease until the area dedicated to fresh produce is restored to at least 10%.

PART B - OTHER AGENCY COMMENTS AND CONDITIONS

To be checked when completed where applicable.

<input type="checkbox"/>	<p>1. Fresno County Environmental Health Department:</p> <ul style="list-style-type: none"> • Should the facility undergo remodel, then prior to issuance of building permits, the applicant shall submit complete food facility plans and specifications to the Fresno County Department of Public Health, Environmental Health Division, for review and approval. Contact the Consumer Food Protection Program at (559) 600-3357 for more information. • The proposed project has the potential to expose nearby residents to elevated noise levels. Consideration should be given to the City of Fresno Municipal Code.
<input type="checkbox"/>	<p>2. Police Department: Comply with the attached Fresno Police Department Memorandum and Security Plan dated July 20, 2023.</p>

PART C – PLANNING DEVELOPMENT CODE STANDARDS

Alcohol Use Requirements

1. Sale and consumption of alcoholic beverages shall be subordinate to on-site food sales.
2. This special permit approval is subject to compliance with all applicable provisions of [Section 15-2706](#) of the Fresno Municipal Code (FMC) for alcohol sales for the Responsible Neighborhood Market Act.
3. A valid Business License Tax Certificate for the establishment shall be maintained at all times.
4. Alcohol sales shall cease at 2:00 a.m. all days of the week.

PART D – OPERATIONAL REQUIREMENTS

1) Planning/Zoning/Environmental Compliance Requirements

a) Operation shall take place in accordance with the Fresno Municipal Code, Fresno High-Roeding Community Plan, CG (*Commercial General*) zone district, and all other applicable sections of the Fresno Municipal Code.

b) Operations and development of the subject property shall occur in accordance with all requirements included within Section 15-2706 of the FMC pertaining to uses with Alcohol Sales, including but not limited to, the following:

i) Landscaping.

- New Buildings. Landscaping shall be provided per the underlying District.
- Existing Buildings. Perimeter landscaping and Parking Lot Shading shall be provided per the underlying district. The Review Authority, at their discretion, may make exceptions to the prescribed standards, however, in no case shall the reduction result in a net reduction of 35 percent or greater in the amount of landscaping provided. Landscaping may also be aggregated to minimize the impact on existing parking areas.

ii) Lighting. The exterior of the premise, including adjacent public sidewalks and all parking lots under the control of the establishment, shall be illuminated during all hours of darkness during which the premises are open for business in a manner so that persons standing in those areas at night are identifiable by law enforcement personnel. However, required illumination shall be placed and/or shielded in a way that minimizes interference with the neighboring residences.

iii) Litter and Graffiti.

- Trash and recycling receptacles shall be provided by public entrances and exits from the building.
- The owner or operator shall provide for daily removal of trash, litter, and debris from premises and on all abutting sidewalks within 20 feet of the premises.
- The owner or operator shall remove graffiti within 48 hours.

iv) Pay Phones and Vending Machines. External pay phones and snack vending machines are prohibited.

v) Video Surveillance.

- Establishments must equip a fully functional color digital video camera system.
- The system must continuously record, store, and be capable of playing back images and be fully functional at all times, including during any hours the business

is closed. The system must be maintained in a secured location inside of the business.

- The system shall have the correct date and time stamped onto the image at all times.
- The camera storage capacity should be for at least two weeks (14 calendar days). Such cameras must be capable of producing a retrievable and identifiable image than can be made a permanent record and that can be enlarged through projection or other means.
- If utilizing a digital video recorder, it must be capable of storing at least 14 days of real-time activities.
- The system shall be capable of producing a CD or digital playback feature and may be provided to an authorized representative of the Fresno Police Department within 24 hours of the initial request relating to a criminal investigation only.
- The interior of the business must have at least one camera placed to focus on each cash register transaction to include the clerk as well as the customer waiting area.
- There shall be four exterior cameras placed so as to record activities in the primary customer parking areas of their business. These cameras should be of sufficient quality to be able to identify persons and or vehicles utilizing the business parking lot.
- All interior cameras shall record in color.
- All exterior cameras shall record in color and have automatic low light switching capabilities to black and white. Exterior cameras should be in weatherproof enclosures and located in a manner that will prevent or reduce the possibility of vandalism.

vi) Signage.

- The provisions specified under Article 26, Signs and this subsection shall apply. Where conflict may occur between the provisions of Article 26 and this subsection, the more restrictive provisions shall govern.
- The following copy is required to be prominently posted in a readily visible manner on an interior wall or fixture and not on windows:
 - "California State Law Prohibits the Sale of Alcoholic Beverages to Persons Under 21 Years of Age."
 - "No Loitering is Allowed On or In Front of These Premises."
 - "No Open Alcoholic Beverage Containers are Allowed on These Premises."
- No more than 15 percent of the square footage of each window and clear door that is visible to the public from a public thoroughfare, sidewalk, or parking lot of an off-sale alcohol retail outlet shall bear advertising, signs, or other obstructions of any sort.

The area covered by signs or advertising includes all clear areas within signs or advertising, such as the clear area within neon signs.

Signage, advertising, or other obstructions inside or outside the establishment that are not physically attached to the windows or doors, but are visible from a public thoroughfare, sidewalk, or parking lot in the same manner as if they were physically attached is included in the 15 percent limitation.

Any signage required by law shall not count towards the 15 percent limitation, but shall nonetheless follow rules related to visual obstruction.

- Advertising and signage on windows and clear doors shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the outlets, including the area in which the cash registers are maintained, from exterior public sidewalks, parking lots, or entrance to the outlets.
- Any establishment located within 250 feet of a sensitive use may not advertise alcohol sales in a manner visible from the outside of the establishment, such as from a public thoroughfare, sidewalk, or parking lot.

vii) Loitering and Other Nuisance Activities. The operation of the establishment shall not result in repeated nuisance activities on the property, which may include, but are not limited to, repeated disturbances of the peace, illegal drug activity, public drunkenness, drinking in public, alcoholic beverage and tobacco sales to minors, harassment of passerby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, loitering, excessive littering, graffiti, illegal parking, excessive loud noises (especially in the late night or early morning hours), traffic violations, curfew violations, lewd conduct, or other violations of City, State, or federal laws, especially when contributing to a proportionally high rate of police reports and arrests to the area.

viii) Training. The owners and all employees of the establishment who are involved in the sale of alcoholic beverages must complete approved course(s) in training of liquor sales and handling within sixty days after approval of the Conditional Use Permit becomes final, or for employees hired after the approval of the Conditional Use Permit, within sixty days from the date of hire. To satisfy this requirement, a certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service (CCC/RBS) or other certifying or licensing body designated by the State of California.

ix) Compliance with Laws. The establishment must remain in compliance with all local, State, and federal laws, regulations, and orders, as well as all conditions of approval imposed on the use. This includes compliance with annual City business license fees.

x) Posting of Conditions. A copy of all conditions of approval and training requirements shall either be posted in a conspicuous and unobstructed place near the entrance, cashier counter, or customer service area of the establishment or posted in an

employee area and provided upon request (e.g. via flyer or brochure) to patrons and enforcement officials.

xi) Prohibited Products. The sale or distribution of one or more of the following shall be prohibited.

- Wine in containers of less than 750 milliliters.
- Single containers of beer, malt liquor, wine coolers, and similar alcoholic beverages not in original factory packages of four-packs or greater.
- Distilled spirits in containers of less than 375 milliliters.
- Paper or plastic cups in quantities less than their usual and customary packaging.

xii) Cancel and Transfer.

- New establishments shall transfer and cancel ABC licenses in good standing as set forth in Table 15-2706 below, from within a Council District identified as having an overconcentration of ABC licenses for off-sale use, as determined by the Director following review of data prepared by the California Department of Alcoholic Beverage Control. The ABC license will be submitted to the Alcoholic Beverage Control for permanent cancellation. A canceled ABC license cannot be reactivated or reinstated.
- Each ABC license that is canceled also includes surrender of the alcohol-sales portion of all related Conditional Use Permits and waiver of any legal non-conforming use rights related to the sale of alcohol for off-site consumption.
- Exemptions.
 - a. The Cancel and Transfer requirements shall not apply when an establishment is required to relocate as the result of a taking by eminent domain and a license transfer to a new establishment site is necessary due to such taking.
 - b. Existing establishments that seek to expand their floor area or extend their operating hours.
 - c. Existing establishments that seek to relocate if the proposed relocation meets the requirements of Section 15-2706.F.7.

c) Operation shall take place in accordance with the attached “Notes and Requirements for Entitlement Applications” as applicable.

d) Property development standards and operational conditions are contained in Articles 12, 20, 23, 24 and 25 of the FMC. Any project revisions, development, and operation must comply with these property development standards and operational conditions.

PART D – OPERATIONAL REQUIREMENTS

1. Miscellaneous Requirements

- a. Building plans and permits are required.

- b. Approval of this special permit shall be considered null and void in the event of failure by the applicant and/or the authorized representative, architect, engineer, or designer to disclose and delineate all facts and information relating to the subject property and the proposed development including, but not limited to, the following:
- i) All existing and proposed improvements including but not limited to buildings and structures, signs and their uses, trees, walls, driveways, outdoor storage, and open land use areas on the subject property and all of the preceding which are located on adjoining property and may encroach on the subject property;
 - ii) All public and private easements, rights-of-way and any actual or potential prescriptive easements or uses of the subject property; and,
 - iii) Existing and proposed grade differentials between the subject property and adjoining property zoned or planned for residential use.
- c. Approval of this site plan may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on this special permit, the Zoning Ordinance, and all Public Works Standards and Specifications. The Planning and Development Department shall not assume responsibility for any deletions or omissions resulting from the Development Permit process or for additions or alterations to construction plans not specifically submitted and reviewed and approved pursuant to this site plan or subsequent amendments or revisions.

COMPLIANCE PROCESS

Please Note: To complete the compliance process, submit **an electronic copy** of the corrected site plan and corrected elevations to **Steven Martinez** in the Planning and Development Department for final review and approval at least 15 days prior to final sign off. These documents can be uploaded electronically to the citizen access portal at <https://lmsaca.fresno.gov/CitizenAccess/Default.aspx>. It may be necessary to resubmit these “corrected exhibits” a second time if not all the conditions have been complied with or are not shown on the exhibits.

EXPIRATION

The exercise of rights granted by these special permits must be commenced by **April 3, 2027**, (three years from the date of approval), pursuant to FMC Section 15-5013. An extension of up to one additional year may be granted, provided that the findings required under FMC Section 15-5013-A.1 are made by the Director. All required improvements must be installed prior to the operation of the proposed use.

Pursuant to Section 15-5308 of the FMC an expiration date of seven years from the date of approval has been established for Conditional Use Permits. Therefore, the approval for P22-03906 shall expire on **April 3, 2031** and a new conditional use permit must be obtained prior to that expiration date for the use only (not the physical structure(s)).

If you have any questions regarding this letter, feel free to contact me.

Sincerely,

Steven Martinez | Planner
Planning and Development Department

Enclosures:

- ❖ Exhibits O, A, E, F dated May 24, 2023
- ❖ Fresno Unified School District Memorandum dated May 24, 2023
- ❖ Fresno Police Department Memorandum dated July 20, 2023
- ❖ Security Plan dated July 20, 2023
- ❖ General Notes and Requirements for Entitlement Applications